

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THOMAS R. MILLER,	§
	§ No. 553, 2008
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 92S05488DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: January 15, 2009
Decided: February 18, 2009

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 18th day of February 2009, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Thomas R. Miller, filed an appeal from the Superior Court's October 24, 2008 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgment on the

ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) In May 1994, Miller was found guilty by a Superior Court jury of Unlawful Sexual Intercourse in the First Degree and Burglary in the First Degree. He was sentenced to life in prison, plus 8 years at Level V. This Court affirmed the Superior Court's judgment on direct appeal.² Since that time, Miller has filed numerous unsuccessful postconviction motions and petitions.

(3) In this appeal, Miller claims that a) his speedy trial rights were violated by an 18-month lapse between the filing of the charges against him and his trial; and b) the waiver of his indictment was "fraudulent" because the practice in Delaware of waiving an indictment in exchange for a copy of the police report is unconstitutional. Miller requests that he be released from prison because, without an indictment, the Superior Court lacked jurisdiction to try him and the statute of limitations on his crimes has now run.

(4) When considering a postconviction motion pursuant to Rule 61, the Superior Court must apply the procedural requirements of the Rule before reaching the merits of any claims.³ The record reflects that Miller's claims are both time-

¹ Supr. Ct. R. 25(a).

² *Miller v. State*, Del. Supr., No. 236, 1994, Hartnett, J. (May 9, 1995).

³ *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991).

barred⁴ and procedurally barred as formerly adjudicated,⁵ since his convictions became final more than 10 years ago and he unsuccessfully raised his claims in previous postconviction motions. Moreover, Miller has not demonstrated either a miscarriage of justice resulting in a constitutional violation⁶ or that reconsideration of his claims is warranted in the interest of justice.⁷ As such, the Superior Court properly denied Miller's postconviction motion.

(5) It is manifest on the face of the opening brief that the appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁴ Super. Ct. Crim. R. 61(i) (1).

⁵ Super. Ct. Crim. R. 61(i) (4).

⁶ Super. Ct. Crim. R. 61(i) (5).

⁷ Super. Ct. Crim. R. 61(i) (4).